

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEBRASKA

PEAK INTERESTS, L.L.C., a Colorado Limited Liability Company,	)	CASE NO. 8:06CV747
	)	
Plaintiff,	)	
	)	MEMORANDUM AND ORDER
v.	)	
	)	
TARA HILLS VILLAS, Inc., a Nebraska Corporation,	)	
	)	
Defendant.	)	

This matter is before the Court on the Defendant's Motion to Designate an Expert Out of Time and to Extend the Deposition Deadline. (Filing No. 83). The Plaintiff filed a response to the Defendant's motion. (Filing No. 87). Based on the response, it appears that the Plaintiff has no objection to the extension of the deposition deadline, and that the Plaintiff has no objection to the Defendant's request to designate an expert witness out of time, provided that it is afforded an opportunity to designate a rebuttal expert witness. I understand the Plaintiff's response to mean that it wishes to have an opportunity to designate an expert only to rebut opinions provided by the Defendant's proposed expert witness, Rich Hoffman.<sup>1</sup>

Attached to the Defendant's motion is a report generated by Hoffman. The report includes Hoffman's opinion that a key document in the case, the notice document dated February 13, 2006, was created on March 3, 2006, after the deadline for providing notice of Plaintiff's exercise of the option was to have been given to the Defendant. Because that information is relevant to a material fact in this case, justice requires that the Defendant's

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<sup>1</sup> This order does not address or affect the Defendant's pending motion to strike relating to the Plaintiff's designation of Joseph Dizona, Jr. (Filing No. 67).

motion be granted. The Court finds that Defendant should be permitted to designate Hoffman as an expert witness, that Plaintiff will be permitted to disclose an expert witness in rebuttal, and that the deposition deadline should be extended. The Court will also permit the parties additional time to file motions for summary judgment if the new evidence warrants such action.

For these reasons,

IT IS ORDERED:

1. The trial date of November 13, 2007, is canceled;
2. **The trial is now scheduled to commence on February 19, 2008;**
3. The Defendant's Motion to Designate An Expert and to Extend the Deposition Deadline (Filing No. 83) is granted, as follows:
  - a. In accordance with the Federal Rules of Civil Procedure, the Defendant may designate Rich Hoffman as an expert witness on or before October 31, 2007; and
  - b. The Defendant may take the depositions of Bob Knodel, the person identified in the Plaintiff's Responses to the Defendant's Third Set of Interrogatories as the individual who assisted Joseph Aragon in attempting to retrieve information from Aragon's computer, and the Defendant may reopen the deposition of Joseph Aragon.
4. In accordance with the Federal Rules of Civil Procedure, the Plaintiff may designate a rebuttal expert witness to address the opinions of Rich Hoffman only, and such designation shall be made on or before November 7, 2007;

5. The depositions of Bob Knodel and Joseph Aragon shall be completed on or before November 30, 2007;
6. Motions for summary judgment, if any, based on recent discovery, shall be filed on or before December 14, 2007; the responsive briefs and evidence shall be filed on or before January 7, 2008, and reply briefs and evidence shall be filed on or before January 14, 2008; and
7. If any party has a significant conflict with the new trial date of February 19, 2008, the party must notify the Court and counsel within 10 days of this Order.

DATED this 24<sup>th</sup> day of October, 2007.

BY THE COURT:

s/Laurie Smith Camp  
United States District Judge